proof has been introduced tending to show his age or health was different from what he represented it to be, such declarations may be received to show that he had knowledge of his age and condition, and fraudulently misrepresented them.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 989-993; Dec. Dig. § 252.* 7 Va.-W. Va. Enc. Dig. 56; 14 Va.-W. Va. Enc. Dig. 505; 15 Va.-W. Va. Enc. Dig. 455.]

3. Appeal and Error (§ 1056*)—Harmless Error—Evidence.—In an action on a life insurance policy, declarations which were not distinctly remembered by the witness, made in a casual conversation by the insured before he had taken out the insurance, that he could not get any insurance on account of his health, and that he had taken all kinds of medicine from all kinds of doctors, if admissible, were not of sufficient importance to warrant a reversal of a judgment for plaintiff for their exclusion.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4187-4193, 4207; Dec. Dig. § 1056.* 1 Va.-W. Va. Enc. Dig. 592; 14 Va.-W. Va. Enc. Dig. 92; 15 Va.-W. Va. Enc. Dig. 68.]

4. Evidence (§ 262*)—Declarations—Verbal Admissions.—Where declarations were made in a casual conversation five or six years before the witness testified, and they appeared not to have been distinctly remembered or precisely identified, it cannot be said the trial court erred in rejecting them.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 1019-1021; Dec. Dig. § 262.* 4 Va.-W. Va. Enc. Dig. 325; 14 Va.-W. Va. Enc. Dig. 310; 15 Va.-W. Va. Enc. Dig. 257.]

Error to Law and Equity Court of City of Richmond.

Action by Mrs. F. O'Grady against the Metropolitan Life Insurance Company of New York. Judgment for plaintiff, and defendant brings error. Affirmed.

Wellford & Taylor, of Richmond, for plaintiff in error.
Meredith & Cocke, of Richmond, for defendant in error.

WILKES' ADM'R *v.* WILKES et al.

Jan. 15, 1914.

[80 S. E. 745.]

1. Witnesses (§ 159*)—Competency as Witness—Execution of Will—Statutes.—A will is the sole act of the testator, and its execution is not such a contract, matter, or transaction as comes

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

within Code 1904, §§ 3346 and 3346-a, relating to the competency of testimony by a husband or wife.

[Ed. Note.—For other cases, see Witnesses, Cent. Dig. §§ 629, 664, 666-669, 671-682; Dec. Dig. § 159.* 13 Va.-W. Va. Enc. Dig. 914; 14 Va.-W. Va. Enc. Dig. 1095; 15 Va.-W. Va. Enc. Dig. 1093.]

2. Witnesses (§ 188*)—Husband and Wife—Will—Communications—Statutes.—Under Code 1904, § 3346-a, subd. 3, providing that a husband or wife cannot be examined in "any case" as to "any communication" made by the one to the other while married, a wife can not in any action, between any parties, testify to any communications whatever, and after the husband's death cannot testify as to anything that happened at the time her husband made his will and as to whether he or she drew a line through a certain phrase in the will at that time.

[Ed. Note.—For other cases, see Witnesses, Cent. Dig. §§ 734, 736; Dec. Dig. § 188.* 13 Va.-W. Va. Enc. Dig. 914; 14 Va.-W. Va. Enc. Dig. 1095; 15 Va.-W. Va. Enc. Dig. 1093.]

3. Witnesses (§ 52*)—Husband and Wife—Competency.—At common law, a husband and wife were absolutely incompetent to testify for or against each other.

[Ed. Note.—For other cases, see Witnesses, Cent. Dig. §§ 124, 126-136, 165, 415-417, 419, 424; Dec. Dig. § 52.* 13 Va.-W. Va. Enc. Dig. 914; 14 Va.-W. Va. Enc. Dig. 1095; 15 Va.-W. Va. Enc. Dig. 1093.]

4. Witnesses (§ 53*)—Husband and Wife—Competency—Statutes.—Statutes which remove merely the disqualification arising from interest of a wife or husband to testify do not remove the disqualification arising from the relation of husband and wife.

[Ed. Note.—For other cases, see Witnesses, Cent. Dig. §§ 137-141; Dec. Dig. 53.* 13 Va.-W. Va. Enc. Dig. 914; 14 Va.-W. Va. Enc. Dig. 1095; 15 Va.-W. Va. Enc. Dig. 1093.]

5. Wills (§ 289*)—Striking Out Words—Presumptions.—Where words in a will are stricken out, in the absence of evidence to the contrary, it will be presumed that they were stricken out by the testator himself.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 653-661; Dec. Dig. § 289.* 13 Va.-W. Va. Enc. Dig. 775; 14 Va.-W. Va. Enc. Dig. 1081.]

6. Wills (§ 400*)—Probate—Review—Harmless Error.—Where words were sufficiently crossed out in a holographic will, and there was no evidence that the testator did not himself strike them out, it was harmless error to admit incompetent evidence of the widow that she struck it out with her husband's assent before completion

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

and signature by him, where the jury declared the stricken part not a part of the will, and the same as to an erroneous instruction as to the sufficiency of crossing-out marks.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 869-873; Dec. Dig. § 400.* 1 Va.-W. Va. Enc. Dig. 581; 14 Va.-W. Va. Enc. Dig. 91; 15 Va.-W. Va. Enc. Dig. 65.]

Appeal from Corporation Court of Staunton.

Contest of the will of S. W. Wilkes by his collateral kin and by W. L. Brown, executor of his will, against Nannie M. Wilkes, executrix and widow of the deceased, and Birl C. Wilkes by his guardian ad litem. Decree for defendant, Nannie M. Wilkes, and the administrator of Birl C. Wilkes, who died after the decree, appeals, and the collateral heirs assign cross-errors. Affirmed.

Bumgardner & Bumgardner, of Staunton, for appellant.

F. C. Moon, of Buckingham, *C. H., S. V. Kemp,* of Lynchburg, *Landes & East,* of Staunton, and *H. D. Flood,* of Appomattox, for appellees.

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.